
(2015) 03 MAD CK 0345
In the Madras High Court
Case No : W.A. (MD) No. 101 of 2010

R. Manoharan

APPELLANT

Vs

The Director of School Education

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2015) 03 MAD CK 0345

Hon'ble Judges : A. Selvam, J;T. Mathivanan, J

Bench : Division Bench

Advocate : K. Mahendran, for the Appellant; Aayiram K. Selvakumar, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.

1. This Writ Appeal has been preferred against the order passed in W.P(MD)No. 1411 of 2007, dated 23.11.2007 by the learned Single Judge of this Court.
2. The appellant herein as petitioner has filed W.P(MD)No. 1411 of 2007 under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the respondent vide R.C. No. 69657/W2/96, dated 14.08.1996 and quash the same.
3. It is averred in the petition that the petitioner has been appointed as B.T. Assistant on 10.06.1963 and subsequently promoted as P.G. Assistant on 09.08.1979 and further promotion has been given as Headmaster of High School on 07.03.1986. In the year 1978, High Secondary pattern of education has been introduced and Post Graduate Teachers have been appointed and Service Rules are issued as per G.O. Ms.No. 720. As per G.O. Ms.No. 720, the petitioner has possessed of necessary qualification to consider his name to the post of Headmaster. Under the said circumstances, a requisition has been made to the respondent. But the same has been rejected by way of passing the impugned

order dated 14.08.1996 and in order to quash the same, the present writ petition has been filed and also to direct the respondent to give notional promotion to the petitioner.

4. In the counter filed on the side of the respondent, it is stated that the petitioner has been appointed as B.T. Assistant on 10.06.1963 and promoted as P.G. Assistant on 09.08.1979 and thereafter he got promotion as Headmaster on 07.03.1986 and he retired from service on 30.06.1993. As per new Rules for the post of Headmaster of Higher Secondary School (promotional post), a list has been preferred on the basis of seniority from feeder category. Since the petitioner has been appointed as B.T. Assistant on 10.06.1963, his name has not been included. There is no merit in the petition and the same deserves to be dismissed.

5. On the basis of rival contentions putforth on either side, the learned Single Judge has dismissed the writ petition and against the dismissal order, the present Writ Appeal has been preferred at the instance of the petitioner as appellant.

6. The learned counsel appearing for the appellant/petitioner has repeatedly contended that on 28.04.1981, G.O. Ms.No. 720 has been issued, wherein for giving promotion necessary qualifications have been mentioned and the petitioner has already passed Account Test and therefore he is eligible for getting promotion to the post of Headmaster in Higher Secondary School and the respondent without considering necessary qualification for giving promotion to the post of Headmaster or Headmistress from feeder category, has erroneously prepared a list on the basis of date of appointment and under the said circumstances the impugned order passed by the respondent is totally illegal and in order to quash the same, the present writ petition has been filed, but the learned Single Judge without considering the qualifications mentioned in G.O. Ms.No. 720, has erroneously dismissed the writ petition and therefore the order passed by the learned Single Judge is liable to be set aside.

7. The learned Government Advocate has contended that even though in G.O. Ms.No. 720, dated 28.04.1981, one of the qualifications for giving promotion to the post of Headmasters and Headmistresses in Higher Secondary Schools is that the concerned teacher should have passed Account Test for Executive Officers or Account Test for Subordinate Officers Parts I and II and subsequently the Government has relaxed the same and under the said circumstances promotions have been given on the basis of date of recruitment and since the petitioner has been appointed on 10.06.1963, his name has not been included in the list and the learned Single Judge after considering the overall circumstances of the present case, has rightly dismissed the writ petition and therefore the dismissal order passed by the learned Single Judge need not be set aside.

8. The entire argument putforth on the side of the appellant/petitioner is based upon G.O. Ms.No. 720, dated 28.04.1981. As rightly pointed out on the side of the appellant/petitioner, for giving promotion to the post of Headmasters and

Headmistresses in Higher Secondary Schools apart from other qualifications, the concerned teacher should have passed Account Test for Executive Officers or Account Test for Subordinate Officers Parts I and II. On 19.09.1983, the Government of Tamil Nadu has relaxed the said Rule by way of passing G.O. Ms.No. 1825, wherein it is stated that passing of Account Test at the time of promotion is relaxed and further specified that the promotee shall acquire the qualification regarding passing of Account Test within a period of three years from 19th September, 1983. In fact, in G.O. Ms.No. 1825, G.O. Ms.No. 720 has been referred to and such relaxation has been granted on the basis of proviso of Article 309 of the Constitution of India.

9. As per proviso of Article 309 of the Constitution of India, the State Government is having unfettered power of making relaxation in the Rules framed earlier.

10. The main gravamen expressed on the side of the appellant/petitioner is that some unqualified persons (who have not passed Account Test) have been promoted to the post of Headmasters or Headmistresses.

11. As pointed out earlier, apart from other qualifications as per G.O. Ms.No. 720, one of the qualifications is for getting promotion to the post of Headmasters or Headmistresses is that the concerned teacher should have passed Account Test for Executive Officers or Account Test for Subordinate Officers Parts I and II. It is an admitted fact that G.O. Ms.No. 720 has been passed on 28.04.1981 and subsequently the same has been relaxed by G.O. Ms.No. 1825, dated 19.09.1983, wherein promotions given to those teachers who have not passed Account Test, are recognized subject to a specific condition that they should pass Account Test within a period of three years from 19th September, 1983. It has already been pointed out that State Government is having power to relax the existing Rules as per proviso of Article 309 of the Constitution of India. Under the said circumstances, the Court cannot come to a conclusion that some unqualified persons have been promoted to the post of Headmasters or Headmistresses in violation of the conditions mentioned in G.O. Ms.No. 720, dated 28.04.1981.

12. It is seen from the counter filed on the side of the respondent that promotions have been given only on the basis of seniority from the date of appointments and admittedly the appellant/ petitioner has been appointed in the year 1963. Therefore at the time of preparing list of promotion, the appellant/ petitioner has not come within the purview of seniority. Therefore the claim of the appellant/petitioner cannot be entertained.

13. The learned counsel appearing for the appellant/petitioner has also drawn the attention of this Court to the proceeding dated 27.09.1984 passed by the Director of School Education, wherein it is mentioned that certain teachers have not passed necessary Account Test on or before 01.03.1984 and their names have not been included in the promotion list. The said proceeding has come into existence on 27.09.1984, whereas the exemption granted by the State

Government has come into existence on 19.09.1983. Under the said circumstances, the subsequent proceeding passed by the Director of School Education cannot lend support to the contention urged on the side of the appellant/ petitioner.

14. It is an admitted fact that certain teachers have been promoted to the post of Headmasters and Headmistresses in Higher Secondary Schools on the basis of seniority from the date of their respective appointments, even though some of them have not passed necessary Account Test and subsequently their selection has been ratified by the Government by way of exemption and also specified a condition that they should pass Account Test within a period of three years from 19.09.1983. Therefore there is no mistake on the part of the Government in giving promotion to those persons and those persons cannot be termed as unqualified persons.

15. The learned Single Judge after considering the qualifications mentioned in G.O. Ms.No. 720 and subsequent relaxation given by the Government, has rightly found that the appellant/petitioner is not entitled to get notional promotion after his retirement and in view of the discussion made earlier, this Court has not found any acceptable force in the contention putforth on the side of the appellant/petitioner and altogether the present Writ Appeal deserves to be dismissed.

16. In fine, this Writ Appeal is dismissed without costs and the order passed in W.P(MD)No. 1411 of 2007, dated 23.11.2007 by the learned Single Judge is confirmed.